case under discussion is contrary to the general American and English rule, that money subsequently and voluntarily paid after a transaction, with full knowledge of the facts, cannot be recovered, though the claim was invalid. *Cobden v. Kendrick,* 4 Durnford & East T. R., 431; *Flower v. Lance,* 59 N. Y., 603; *Beecher v. Buckingham,* 18 Conn., 110. Even though more was paid than was allowed by law. *Selby v. U. S.,* 47 Fed., 800. Nor can a set-off be maintained under such circumstances. *U. S. v. Clement & Newman,* Crabbe, 499.

INNKEEPER—LOSS OF PROPERTY OF GUEST—CARE REQUIRED OF INNKEEPER.—GIBLYN V. HAUF, 126 N. Y., SUP. 581.—*Held,* that where a guest left a hotel in October, 1908, in debt to the proprietor, claiming to have left a chest with its contents, and made no inquiry about it until November, 1909, when she tendered the amount of her debt and demanded delivery of the chest, and made no efforts to have its whereabouts discovered until March, 1910, such unexcused delay is sufficient to throw upon the guest the burden of proving actual negligence on the part of the innkeeper in failing to keep and restore the property left. Giegerich, J., *dissenting.*

The prevailing view is that he is liable like the carrier, for all goods of the guest lost in the inn, unless the loss happened by act of God, or a public enemy, or by fault of the owner. *Mason v. Thompson,* 9 Pick. (Mass.), 280; *Cunningham v. Bucky,* 42 W. Va., 671. Whatever view is adopted, it is agreed that upon loss or injury to the goods being shown, the innkeeper is *prima facie,* and the burden is on him of establishing such facts as will exonerate him. *Howe Mach. Co. v. Rease,* 49 Vt., 477. It is generally held that after the relation of guest ceases, the innkeeper appears liable only as an ordinary bailee for the goods his departing guest may have left in his care. *Adams v. Clem,* 41 Ga., 665. According to one view the liability of an innkeeper in such cases is merely that of a gratuitous bailee, who is responsible only for gross negligence. *O'Brien v. Vaill,* 22 Fla., 627. But some cases show a tendency to enlarge the liability of the innkeeper under such circumstances, beyond that of a bailee without compensation, and to hold him liable as a bailee holding property upon which he has a lien as a security for a sum due so as to be bound for ordinary care. *Giles v. Fauntleroy,* 13 Md., 126. So some courts hold, where a guest pays his bill and departs, leaving his property behind, the innkeeper is merely a gratuitous bailee of the party, and in case of its loss is only liable for gross negligence. *Miller v. Peeples,* 60 Miss., 819; *O'Brien v. Vail, supra.* But other cases hold he is responsible for want of ordinary care. *Murray v. Marshall,* 9 Colo., 482. And where the guest leaves without paying his bill, the innkeeper is only liable as a gratuitous bailee for goods left with him. *Lawrence v. Howard,* 1 Utah, 142. As a general rule it would seem that a guest does not have to prove negligence of the innkeeper in order to hold him liable. *Burrows v. Trieber,* 21 Md., 320; *Carter v. Hobbs,* 12 Mich., 52.

INSURANCE—MUTUAL BENEFIT ASSOCIATION—RIGHTS OF BENEFICIARY.—SAVAGE V. MODERN WOODMEN OF AMERICA, 113 PAC., 802 (KANS.).—*Held,*

that where the designation of a person as beneficiary in a mutual benefit association is made in pursuance of an agreement, founded upon sufficient consideration, the person so designated cannot be changed by the member, unless by reason of countervailing equities, although the rules of the order permit the member to change the beneficiary at will.

There is some conflict of authority as to the right of a member of a mutual benefit association to change the beneficiary originally designated The weight of authority is, however, that such act is permissible. *Hoept v. Supreme Lodge K. of H.,* 113 Cal., 91; *Carpenter v. Knapp,* 101 Iowa 712; *Ingersoll v. Knights of Golden Rule,* 47 Fed., 272; *Book v. Book,* 1 Ont. L. R., 86. But there is authority for the view that the beneficiary acquires a vested interest, as in an ordinary insurance policy. *Weisert v. Nuell,* 81 Ky., 336; *Love v. Clune,* 24 Colo., 237; *Black v. Valley Mutual,* 52 Ark., 201. Especially if the constitution or the certificate itself gives no power to change the original beneficiary. *Locomotive Engineers v. Winterstein,* 58 N. J. Eq. 189; *Johnson v. Hall,* 55 Ark., 874. Nevertheless, some jurisdictions, which hold generally that the member may change the beneficiary, rule that this power is lost in the case of a contract between the member and the beneficiary. *Carter v. Carter,* 35 Ind., App. 73; *Smith v. N. B. Society,* 123 N. Y., 85. And so the member cannot change the beneficiary when named in consideration of past, present, or future advances. *McGraw v. McGraw,* 190 Ill., 604; *Leaf v. Leaf.* 92 Ky. 166. Nor when the beneficiary promises to pay the assessments and does so. *Maynard v. Vanderwerker,* 24 N. Y., Sup. 932. There are, however, cases which hold that even in the case of contracts, such as above, the member retains the right to change the beneficiary, whose remedy is solely for the breach of the agreement with him. *Sabin v. Grand Lodge A. O. U. W.,* 6 N. Y., St. Rep. 151; *Sovereign Camp W. W. v. Broadwell,* 114 Mo. App. 471, on the ground that the power of appointment is a matter between him and the lodge and cannot be limited by his contract with a third person. *Learned v. Tallmadge,* 26 Barb. (N. Y.), 444.

JUDGMENT—RES JUDICATA—ACQUITTAL OF CRIMINAL OFFENSE.—STATE *v.* ROACH, 112 PAC., 150 (KAN.).—*Held,* that an acquittal upon a criminal charge is not a bar to a civil action brought against the defendant by the state, although, in order to recover, it must prove him to have been guilty of the offense.

This rule is not based on the mere fact that one proceeding is criminal and the other civil, but on the fact that in the criminal proceeding defendant's guilt must be proven beyond a reasonable doubt, while in the civil action a fair preponderance of evidence is sufficient. *U. S. v. Donald-Shulz Co.,* 148 Fed., 581; *State v. Bradnack,* 69 Conn., 212; *Riker v. Hooper,* 35 Vt., 457. As a general rule, a judgment rendered on the merits by a court of competent jurisdiction precludes and bars subsequent litigation between the same parties, or their privies, on the same cause of action. *Oman v. Stone Co.,* 134 Fed., 64; *Stearns v. Fire Ins. Co.,* 124 Mass., 61. Furthermore, the constitutional provision that no man shall be twice punished for the same offense has been held to bar the state from bring-